Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

AUGUSTUS SIMMONS,

Petitioner,

vs.

SUPREME COURT OF CONNECTICUT,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Connecticut

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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CONNECTICUT APPELLATE COURT

STATE OF CONNECTICUT *v.* AUGUSTUS J. SIMMONS
(AC 24163)

Lavery, C. J., and Foti and Schaller, Js.

Argued September 23 – officially released December 14, 2004

(Appeal from Superior Court, judicial district of Hartford, geographical area number thirteen, Cofield, J.)

Augustus J. Simmons, pro se, the appellant (defendant).

Erik T. Lohr, special deputy assistant state's attorney, with whom were *James E. Thomas*, state's attorney, and *Christopher Parakilas*, supervisory assistant state's attorney, for the appellee (state).

Opinion

FOTI, J. The pro se defendant, Augustus J. Simmons, appeals from the judgment of conviction, rendered after a trial to the court, of breach of the peace in the second degree in violation of General Statutes § 53a-181,[1] disorderly conduct in violation of General Statutes § 53a-182[2]

[1] Although the charging document does not refer specifically to a subsection of General Statutes § 53a-181, the record reflects, and the state agrees, that the defendant was convicted under § 53a-181(a)(1), which provides: "A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . [e]ngages in fighting or in violent, tumultuous or threatening behavior in a public place. . . ." The court specifically referred to the provisions of this subsection of the statute in making its findings and rendering its guilty verdict.

[2] Although the charging document does not refer specifically to a subsection of General Statutes § 53a-182, the record discloses that the court, while not so specifying, implicitly found the defendant guilty

(Continued on following page)

and interfering with an officer in violation of General Statutes § 53a-167a.[3] On appeal, the defendant claims that (1) the evidence was insufficient to sustain his conviction with regard to each of the offenses, (2) the conviction of breach of the peace and disorderly conduct violated his constitutional right to free speech and (3) the court abused its discretion in permitting the state to amend the information, thereby adding new charges, prior to trial.[4] Additionally, we notified the parties to be prepared to address at oral argument the issue of whether, under the circumstances of this case, disorderly conduct constituted a lesser included offense of breach of the peace in the second degree. We reverse in part the judgment of the trial court.[5]

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under § 53a-182(a)(1), which provides: "A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . [e]ngages in fighting or in violent, tumultuous or threatening behavior. . . ."

[3] General Statutes § 53a-167a(a) provides in relevant part: "A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer . . . in the performance of such peace officer's . . . duties."

[4] In his brief, the defendant also alleges that he owns the property upon which the incident underlying this appeal occurred and that he therefore had a right to restrict access to the property in the manner in which he did. This is not a legitimate issue in this case, and we decline to address it.

[5] The court also found that the defendant was in violation of his probation. The court imposed a total effective sentence of one year imprisonment. Although the defendant has been released from incarceration and his sentence has expired, this matter is not moot. See *State v. McElveen*, 261 Conn. 198, 213-16, 802 A.2d 74 (2002); *Barlow v. Lopes*, 201 Conn. 103, 112, 513 A.2d 132 (1986); *State v. Scott*, 83 Conn.App. 724, 726-27, 851 A.2d 353 (2004).

On the basis of the evidence presented at trial, the court reasonably could have found the following facts.[6] At approximately 6:50 p.m. on March 14, 2003, Matthew Freiman and Justin Shaw, both of whom were acting in their capacities as members of the Connecticut Army National Guard, were conducting routine security patrols around the perimeter of Bradley International Airport in Windsor Locks. Freiman and Shaw were in uniform and were traveling in a camouflaged pickup truck. The guardsmen drove across a spectator lot, where members of the public are permitted to observe airplanes taking off and landing. The guardsmen stopped their vehicle when they observed a rope, strung between a security fence and a post, blocking their path of travel around the perimeter of the airport. The defendant had assembled this obstacle. The guardsmen immediately encountered the defendant as he approached their vehicle. The defendant was flailing his arms and yelling.

When the defendant approached the truck, he shouted profanities at the guardsmen; he told them that they were on his property and that military personnel did not belong there. Freiman identified himself and attempted to calm the defendant. Unsure of the defendant's motives, the guardsmen reported the defendant's actions to their superiors and left the scene. Michael Allard, a state police trooper, responded to the scene shortly thereafter. When Allard asked the defendant what had transpired, the

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[6] The record does not contain either a written memorandum of decision or a signed transcript of proceedings in which the court stated its decision orally. The defendant, however, has filed an unsigned transcript that contains the court's oral decision in this matter, and we deem this transcript to be a sufficient basis upon which to review the court's findings and legal conclusions.

defendant stood face-to-face with Allard and, using profanities, shouted that he was on his own property, that he could do whatever he wanted to do and that Allard had no right to be there. Allard requested that the defendant step back and submit to a patdown search. The defendant did not comply with this request and continued to speak to Allard in an agitated tone, flailing his arms as he did so. Allard attempted physically to force the defendant to turn around, but the defendant resisted. Allard ultimately restrained the defendant and conducted a patdown search, despite the defendant's physical and verbal protests. Kenneth Hardick, another police trooper who arrived on the scene during the struggle, subsequently arrested the defendant.

I

The defendant first claims that the evidence was insufficient to convict him of any of the three crimes of which he stands convicted. We disagree.[7]

"In reviewing the sufficiency of the evidence to support a criminal conviction we apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have

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[7] We determine, in part IV, that disorderly conduct is a lesser included offense of breach of the peace in the second degree. We determine, in part IA, that the evidence was sufficient to convict the defendant of breach of the peace in the second degree. Having determined that the evidence was sufficient to convict the defendant of this greater offense, we likewise conclude that the evidence was sufficient to convict the defendant of the lesser offense of disorderly conduct.

concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We note that the [fact finder] must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the [fact finder] to conclude that a basic fact or an inferred fact is true, the [fact finder] is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . . Our review is a fact based inquiry limited to determining whether the inferences drawn by the [finder of fact] are so unreasonable as to be unjustifiable." (Citation omitted; internal quotation marks omitted.) *State v. Carcare*, 75 Conn.App. 756, 778-79, 818 A.2d 53 (2003).

A

We first consider the defendant's claim that there was insufficient evidence to convict him beyond a reasonable doubt of breach of the peace in the second degree. The state bore the burden of proving beyond a reasonable doubt that (1) the defendant engaged in fighting or in violent, tumultuous or threatening behavior, (2) that this conduct occurred in a public place and 3) that the defendant acted with the intent to cause inconvenience, annoyance or alarm, or that he recklessly created a risk thereof.

Here, the court specifically found that the defendant intentionally acted in an aggressive and threatening manner. In this regard, the court found that the defendant aggressively approached the guardsmen while flailing his arms and that he spoke to them in a loud voice, shouting profanities and ordering them off of the property. The court found that the defendant's conduct caused the guardsmen "to fear that something might happen," and motivated them to leave the scene of their assigned duties. The court also found that the defendant's conduct occurred in a public place in that the spectator lot is property maintained for use by the public. All of the court's findings in this regard are supported by the evidence presented at trial.

Further, the record supports the court's finding that the defendant engaged in such conduct intending to cause inconvenience, annoyance or alarm. "[I]ntent is generally proven by circumstantial evidence because direct evidence of the accused's state of mind is rarely available. . . . Therefore, intent is often inferred from conduct . . . and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom." (Internal

quotation marks omitted.) *State v. Weaver*, 85 Conn.App. 329, 344, 857 A.2d 376 (2004). The defendant testified that his goal was to expel the guardsmen from the spectator lot. The defendant's tumultuous and threatening behavior clearly supported the court's finding beyond a reasonable doubt that the defendant intended to cause inconvenience, annoyance or alarm.

B

The defendant next claims that the evidence did not support his conviction of interfering with an officer. The state bore the burden of proving beyond a reasonable doubt that (1) the defendant obstructed, resisted, hindered or endangered any peace officer and (2) that such conduct occurred in the performance of the peace officer's duties.

Our review of the record discloses that the evidence was sufficient to support the conviction. Allard testified that when he arrived at the spectator lot, he encountered the defendant, who was sitting in a vehicle. Allard recalled that when he asked the defendant what had occurred, the defendant exited his vehicle and "got into [his] face so close that [he] felt that it was necessary to have [the defendant] back away." The defendant responded to Allard's inquiries by using profanities and demanding that Allard leave the property. Allard further testified that, when he instructed the defendant to calm down and to turn around so that he could conduct a patdown search, the defendant refused to comply. Allard also testified that he attempted physically to turn the defendant around and that the defendant pulled away from him. Finally, Allard testified that he had to use physical force to restrain the defendant against the front of his vehicle because of the

defendant's continued efforts to get away from him. Allard's account of the defendant's behavior as hostile, aggressive and noncompliant with his demands was corroborated by the testimony of other police officers who arrived on the scene during these events. In addition to making findings concerning the defendant's conduct, the court found that Allard was in uniform and in the performance of his official duties as a state trooper. These findings are also supported by the evidence presented at trial.

Accordingly, the evidence amply supported the court's findings beyond a reasonable doubt that the defendant's actions impeded, and therefore hindered, Allard's performance of his duties as a police officer assigned to investigate the incident at the spectator lot.

II

The defendant next claims that his conviction for breach of the peace violated his constitutional right to free speech. This claim is totally without merit. The record reflects that the court's judgment was based on the defendant's conduct and not his speech. Although the court, in its decision, referred to the defendant's use of profanity, it clearly did so because the defendant's use of profanity was a component of his hostile and aggressive conduct. For instance, the court referred to the fact that the defendant's use of profanity, combined with his physical movements and the fact that he was yelling at the guardsmen, caused the guardsmen to fear the defendant and to leave the scene. The record reflects that the court deemed the defendant's conduct to be the only appropriate consideration in finding that he had violated the breach of the peace statute.

III

The defendant next claims that the court abused its discretion in allowing the state to amend the information prior to trial. We disagree.

The record reflects that the defendant was initially charged with breach of the peace in the second degree. Prior to the start of trial, the state filed a subsequent information that included the charges of disorderly conduct and interfering with an officer.[8]

A prosecutor has broad authority to amend the information, prior to the commencement of trial pursuant to Practice Book § 36-17.[9] *State v. Grant*, 83 Conn.App. 90, 97, 848 A.2d 549, cert. denied, 270 Conn. 913, 853 A.2d 529 (2004). The defendant has failed to carry his burden of demonstrating that the court abused its discretion by permitting the state to file the substitute information.

IV

We next consider whether, under the circumstances of this case, disorderly conduct is a lesser included offense of breach the of peace in the second degree.

Generally, the *Blockburger* test is used to determine if an offense is a lesser included offense and therefore the

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[8] The record reflects that, after the state filed its substitute information, the court informed the defendant that it would grant the defendant a continuance to permit him to consult with an attorney. The defendant declined this invitation and did not request that the court grant him a continuance.

[9] Practice Book § 36-17 provides in relevant part: "If the trial has not commenced, the prosecuting authority may amend the information, or add additional counts, or file a substitute information. . . ."

same offense for double jeopardy purposes. See *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). "First, the charges must arise out of the same act or transaction. Second, it must be determined whether the charged crimes are the same offense. Multiple punishments are forbidden only if both conditions are met. . . . [W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. . . . In conducting this inquiry, we look only to the relevant statutes, the information, and the bill of particulars, not to the evidence presented at trial." (Citations omitted; internal quotation marks omitted.) *State v. Denson*, 67 Conn.App. 803, 808-809, 789 A.2d 1075, cert. denied, 260 Conn. 915, 797 A.2d 514 (2002).

Because the state did not file a long form information and the short form informations do not set forth the facts underlying the charges, we will examine the record to determine whether the charged offenses arose out of the same act or transaction. The court explained that it was using the same actions by the defendant as the basis for its finding with regard to the breach of the peace and disorderly conduct charges. Accordingly, we conclude that the first prong of *Blockburger* is satisfied.

The second prong of *Blockburger* concerns whether each statutory violation requires proof of a fact that the other does not. General Statutes § 53a-181(a)(1) provides in relevant part: "A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . [e]ngages in fighting or in violent, tumultuous or threatening behavior in a public place. . . ."

General Statutes § 53a-182(a)(1) provides in relevant part: "A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person ... [e]ngages in fighting or in violent, tumultuous or threatening behavior. ... " It is clear that the only difference between the two statutes is that the breach of the peace statute requires that the proscribed conduct occur in a public place. The disorderly conduct statute does not require proof of any fact not also required for conviction under the breach of the peace statute.

Here, it is clear that the court used the same facts to convict the defendant of the two charges. After finding the defendant guilty of breach of the peace, the court stated: "And as it relates to disorderly conduct, the elements they are essentially the same as breach of the peace, however, there is no requirement that the conduct [be in] a public place although that certainly is not an issue for this because I have found it was in a public place and that you were engaging in fighting, violent, tumultuous, or threatening behavior, that is, as it relates to these police officers, once again, flailing your arms, which was testified [to] by the officer."

Under the facts of this case, we conclude that it was not possible to commit the offense of breach of the peace in the second degree without having first committed the offense of disorderly conduct. Accordingly, these two offenses stand in the relationship of greater and lesser included offenses.

"It is well established that if two offenses stand in the relationship of greater and lesser included offense, then [t]he greater offense is ... by definition the same for

purposes of double jeopardy as any lesser offense included in it." (Internal quotation marks omitted.) *State v. Porter*, 76 Conn.App. 477, 485, 819 A.2d 909, cert. denied, 264 Conn. 910, 826 A.2d 181 (2003). The defendant's convictions on these two charges violated the constitutional prohibition against double jeopardy. "[T]he remedy in a case such as this is to combine the conviction on the lesser included offense with the conviction on the greater and to vacate the sentence on the lesser included offense." (Internal quotation marks omitted.) Id., at 486, 819 A.2d 909.

The judgment is reversed in part and the case is remanded with direction to combine the conviction of disorderly conduct with the conviction of breach of the peace and to vacate the sentence on the conviction of disorderly conduct. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

Appellate Court
Hartford County
At Hartford, Connecticut

State of Connecticut

V.

Augustus J. Simmons

Case No. AC 24163

September 23, 2004

Before:

The Honorable William J. Lavery, Chief Judge, Presiding
The Honorable Paul M. Foti, Judge
The Honorable Barry Shaller, Judge

Appearances:

For the Appellant:
Augustus Simmons, Pro Se

For the Appellee:
Attorney Erik T. Lohr,
Special Deputy Assistant State's Attorney

[1] JUDGE LAVERY: Good afternoon, ladies and gentlemen. Welcome to the Appellate Court. Each side will receive 20 minutes to make their argument. The appealing side, that is, the appellant, may reserve as much time as it wishes for rebuttal. Please identify yourself before proceeding. If you are a pro se, that is, you're not a licensed lawyer in the State of Connecticut, and you're representing yourself, please let us know.

Now, the first case on this afternoon's docket is *State v. Simmons*, 24163. All right.

MR. SIMMONS: May it please the Court, my name's Augustus Simmons. I'm appearing pro se in this matter of Simmons – *State v. Simmons*. I –

JUDGE LAVERY: Mr. Simmons, without counting against your time, did you receive – because you're pro se – the message where we requested that – does disturbing – breach of peace and disorderly conduct merge under lesser included offense. Did you get that message?

MR. SIMMONS: There was a message left on my phone. Yes, Your Honor.

JUDGE LAVERY: All right, thank you. I just wanted to make sure you were aware, sir. All right, sir, I'll start your time from now.

MR. SIMMONS: Am I correct, Your Honor, in – when you said that I have ample time for rebuttal?

[2] JUDGE LAVERY: You – you have total of 20 minutes.

MR. SIMMONS: I would like five minutes of rebuttal time.

JUDGE LAVERY: So, I'll – I'll – at 2:20, I will say to you, you have five minutes left.

MR. SIMMONS: Thank you.

JUDGE LAVERY: But that you can use any way you want. As rebuttal, or go straight ahead. Okay?

MR. SIMMONS: All righty.

JUDGE LAVERY: Thank you, sir.

MR. SIMMONS: Your Honors, the first matter that needs attention in this whole matter, is whether or not this Court has jurisdiction to even hear this case. The fact of the matter is, in forty – since 1942, since 1972, there is not – there has not been any kind of mesne

process, initiated relative to this land, this property up at Bradley Field.

We've gone far afield, far astray, and including this Appellate Court, has issued sanctions, all kinds of verdicts, negative decisions, denials, dismissals. Same with the Supreme Court. They rendered a decision against – against the plaintiff – against the defendant, with no case before the Court. Absolutely none. There has never been any mesne process started since the property – and this goes back to 1962, we went through two condemnations, they – both condemnations were ruled null and void. The property [3] got put back in my name, which was certainly in error, and since it got put back into my name, there is not any case before any court in this United States, including Hartford County, that this Court could act upon.

The – the statute is very clear, I believe it's 8-164. Under the practice book it's relative to land. Whenever there's – land in dispute – whatever the judge's decision is, you hand that decision over to the clerk of the court, and it becomes a matter for – with the clerk of the court, indefinitely. There is not any kind of a decis – there's not any kind of a – a action relative to that land with the clerk of this court since 1972.

I raise these questions because it goes to the very heart of why – why the defendant in this case acted the way he did. Being charged with breach of the peace and disorderly conduct, and interfering with an officer. It makes no difference to me whether it gets combined or not, I know what I said. The whole basic question in this matter is, did I have a right, a constitutional right, as the owner of that property, to order somebody off the property that I didn't want on there – who was a trespasser. And as

far as I'm concerned, I know what I said. I said "Hey, you two fellas, out of here". And that was the extent of it. And to read such a disgusting trash-filled brief by [4] the state, and I cannot read what's in here because of the people that are in here, but it's "F this", and "F that", and "MF this" and "MF that" – I've never used them words in my life, it's not in my vocabulary.

That has been the gist of this whole situation from day one. Dirty tricks, dirty pool, the bottom line is, Your Honors, 42 years, I've been flying these planes in and out of Bradley Field, with the instrumentation that's on that property, and to this day, I have not been paid one dollar. And this lien was on there, for the first ten years I had Attorney Tom Byrne was representing me, and he's listed on here as a lien-holder. And he's got to be notified and paid before – under statute 48-21 before the owner gets paid. So how long can this thing go on? What's fair here? Where's justice?

When I – when I instructed my attorney, who then was Geoff Naab from Manchester, to defend me in the original action, I told him, in no uncertain terms, the answer is – my defense is that there has not been any action of any kind initiated before this Court since 1972. I came into Court here and I was sitting in the back here and I got livid when I heard this Appeals Court, castigate him saying: Hey, there's a judgment – a judgment a of Mr. Rogin.

Judgment. Your Honors, you know very well what a judgment requires. It requires three essentials: [5] jurisdiction over the subject matter, jurisdiction of the parties, and jurisdiction of the process. I'm going to read a matter

on jurisdiction that I think is very apropos, that fits my situation very well.

"Jurisdiction of the subject matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. *Foltz v. St. Louis*, 60f 316. But, before this potential jurisdiction of the subject matter, this power to hear and determine, can be exercised, it must be lawfully invoked and called into action. The parties and the subject matter of this particular case must be brought before the Court in such a way that it acquires the jurisdiction and the power to act. There must be a right in dispute between two or more parties. A proceeding commenced under the proper rules of law. Process must be served on the opposite party, or parties, in order that they may have an opportunity to be heard. Or the property, if that be the subject matter of that action, must be within such jurisdiction. And the owner or person having the right to claim it or be heard, must be notified as required by law, or the pendency of the proceedings. Brown, on jurisdiction, 2 and 9, 15cj 734 797."

I got to say to this Court, I've never had a day in [6] court since 1972. I've never been notified of any kind of an action before the Court. Rogin-Hirtle did stick an action on the court, but he never – under Simmons v. Wetherell, which is a tort action, but he never – the name of the case was Simmons v. Wet erell, but he never listed the owner. I – I'm the party that's involved. He never listed the Federal Aviation Administration.

And, Your Honors, I filed a – it's been a perpetual thing, and talk about expense – I filed a motion, September the

13th, 2004, with this Court here, downstairs, motion to quash a writ and an injunction. And I get the usual reply. No. You had an action – you had a decision against you by Judge Satter. You had a – you had sanctions issued by the Appellate Court. And the Connecticut Supreme Court said, in May 30th-31st, of 2000, you cannot bring any more actions under – under your tort action. Never had a day in court – nothing. But you cannot bring any more actions. And this Court saying it – sanctions, sanctions. Where the hell is the action? I – I am not going to accept this business of you're not supposed to embarrass the Supreme Court. I know that's an old axiom and for several years I tried to refrain, with filing all kinds of motions and whatnot to try to get some resolution out of this. And no way. And it's reached the point now where, [7] let's call up the Hartford Courant, or New York Times, or Sixty Minutes, so – instead of putting that adverse publicity in the paper like they did a few – a couple of weeks or so: Hey, he got put in jail again.

It's bad enough that I didn't get paid one dollar. All these months that I spent in prison. My social security got deducted. My medicare got deducted. At my age? I'm a young 84, and I feel 48, and I'm ready for another 20 years with the state if they think that they're going to wear me down. Nowhere in the history of this United States has there been such a – a miscarriage of justice as there is in this case here.

And now we get to the matter of this fella – these two fellas, from the Air National Guard, and I feel sorry for them. They're really not the – they're really not the culprits. They're victims of circumstances. Victims of circumstance to the extent that the Connecticut Department of Transportation has for 20, 30 years from – from when the

condemnations have flunked out – they've been leasing my property to the FAA – certifying – warranting that they have acquired and possessed a legal right to be entering into leases. And the FAA, from day one they went in and occupied the territory, never approached me, never offered one dollar. To this day they have not paid one dollar, to me, to the state, or to – or into the [8] Federal court. And I got to keep flying the planes in and out for the primary runway at Bradley Field.

So the National Guard, the air – Connecticut Department of Transportation leases some of my – what is known as parcel A – to the Air National Guard. After the National Guard put the fence up, and I had been arrested so many times already, and put in prison. I lost count of how many times I been in there. They put the fence up but I said "Look, I've got several lien holders on here". The next day they – after the fence went up they went to the town records and found out I had 15 lien-holders on that property. And they have not put that property to use to that – to this day. And all – 90 percent of them trees that are on that lot are still standing, because they don't dare cut them down because they know they don't belong there. They – they were supposedly given a green light by the Department of Transportation, who don't own it – never acquired it. Who never initiated any action of any kind to acquire it.

So, these two fellas come cruising through, and I say "Hey, you two fellas, out of here". What's wrong with that? It's certainly is constitutional. It's my property. And you got to keep in mind that we're near an airport. You got the jet planes, and whatnot. Am I supposed to say to them, in a hushed tone "Will you [9] two nice little gentlemen, please don't come on the property". With the roar of the

planes – when the planes taking off, you hear the exhaust – almost deafening, but the – these two individuals were on the move. And to castigate the – put the – put a bunch of trash in the record the way this is, it's – it's nothing but disgust.

I would like to just tell the Court that the – under jurisdiction, was the question of jurisdiction brought up with the Supreme Court in 1978 – 79? You – damn right, it was. I'm going to read just one paragraph: Moreover, the judgment below is being challenged because that the appellant contends that the trial court lacked jurisdiction to enter the judgment. It is well-established that lack of jurisdiction may be noticed at any time, *Tellier v. Zarnowski* – and if I haven't raised it enough times before, I'm certainly raising it today. I – I want to just stress the fact that – from *Karp v. Urban Development*, 162 CT 525: The issue on appeal to this court, therefore, whether the record shows the Superior Court to have lacked jurisdiction to consider the plaintiff's appeal. That issue will be determined according to the construction given to general statute A-132.

I got to say to this Court, I went through two condemnations. I went through every dirty trick in [10] the book. You name it, and they did it. And I got a special act through the legislature, because at that time I was not familiar with the law and relative to sovereign immunity, and etc., etc. Special Act 169, 170 in 1969 was passed, for damages. And that was the only thing that was before the court. And I'm saying to this Court, that there's no way in hell that the State of Connecticut can proceed with a judgment under my tort action. You cannot make a contract out of a tort action.

Following up on *Karp v. Urban Development*, CT statutes 8-29 which governs the procedures of the defendant, requires that the statement be filed with the clerk of the Superior Court.

JUDGE LAVERY: You have five minutes left, sir.

MR. SIMMONS: Five minutes left? Thank you, Your Honor. There was no statement of compensation.

JUDGE LAVERY: Did you want to save the five minutes for rebuttal, Mr. Simmons?

MR. SIMMONS: Yes.

JUDGE LAVERY: Well, then, you'd better stop now, sir.

MR. SIMMONS: Thank you.

MR. LOHR: Good afternoon, Your Honors. May it please the Court, my name is Erik Lohr. I'm a special deputy assistant state's attorney at the appellate bureau of the office of the chief state's attorney, [11] and I represent the state.

JUDGE LAVERY: Mr. Lohr, when the trial for the court began on April 8th, the state – the prosecutor filed a substituted information, adding two charges, interfering and disorderly.

MR. LOHR: Yes.

JUDGE LAVERY: Was there ever a long form filed, was there ever –

MR. LOHR: No, Your Honor.

JUDGE LAVERY: I know that there was no bill of particulars, he never asked –

MR. LOHR: No, Your Honor.

JUDGE LAVERY: – but there was never a breakdown of what the state claimed constituted the disorderly as opposed to the breach, or the interfering as opposed to either of the other two. Is that correct?

MR. LOHR: That's correct, Your Honor.

JUDGE LAVERY: All right.

MR. LOHR: There was – there was never a bill of particulars. There was never a motion for articulation after the fact. There was never anything that limited what Mr. Simmons was charged with or convicted under, except for the trial court's saying that with regard to the breach of peace it was subsection 1. With regard to the disorderly conduct, it's unclear from the record.

JUDGE LAVERY: But isn't disorderly a lesser [12] included offense of breach of the peace?

MR. LOHR: It can be, Your Honor. And simply looking at the charging information, which, in this case, was the short form information, it was simply the two statutes that were charged. And – and the statutes themselves, breach of peace has six subsections, and disorderly conduct has seven. There could be any mix or match under – under either – or both of those two statutes.

JUDGE LAVERY: Well, we know which subsection the breach of the peace is, don't we?

MR. LOHR: Yes, Your Honor. That's subsection 1, because that's what the trial court found him guilty

under. But that's after the fact, that's a substantive determination. Before the fact, simply looking at the charging information, and looking to –

JUDGE LAVERY: Yes, but I – but lesser included offenses can mean after all the evidence is put in, isn't it?

MR. LOHR: Yes, Your Honor. But in this case, we don't know. There was no motion for articulation. There was – there was nothing to – to expound upon which particular subsection of the disorderly conduct statute Mr. Simmons was convicted under. So, it's unclear.

JUDGE LAVERY: But, some of this is sophisticated and he's a pro se. You know, there is a lot of law [13] that disorderly can be a lesser included offense of the breach of peace. Isn't that true?

MR. LOHR: It can be, Your Honor. But –

JUDGE LAVERY: Right. You just don't believe it is, in this instance?

MR. LOHR: No, Your Honor. I'm sorry.

JUDGE LAVERY: All right. No, that's fine. No, no.

MR. LOHR: It could have been, because as the Court is aware, disorderly conduct and breach of peace, subsection 1, under both statutes, are essentially identical, with the exception of, breach of peace requires in a public place, and disorderly conduct does not. But there are other subsections, for instance, subsection 2 under the disorderly conduct statute, which – excuse me, one second – which reads "By disorderly – by offensive or disorderly

conduct – and the mens rea for both of them is identical, I'll – that's clear – subsection 2 of disorderly conduct is "By offensive or disorderly conduct, the defendant annoys or interferes with another person". Easily, that could have been found here, simply based on his conduct towards both of the Guardsmen.

JUDGE FOTI: Which is different that engaging in fighting or violent, tumultuous, or threatening behavior in a public area.

MR. LOHR: Yes, Your Honor. And, in fact, on page 6 of the defendant's brief, he concedes that waving [14] one's arms while close enough to make physical contact with another, could be construed as a breach of peace. And Specialist Freemen, I believe it was, the driver of the Guardsman's vehicle, testified that – well, he said two things. One, he said that the defendant came 12 to 15 inches from the passenger side window – I'm sorry, from the driver's side window of the vehicle. And the other was "He came right up to the window". And, surely, either one of those is close enough to make physical contact. That would be sufficient to constit – to support the breach of peace. The disorderly conduct could come afterwards, based on his conduct in approaching, yelling and screaming, expletives and so forth. Either of those would support a subsection 2 violation of the disorderly conduct statute.

Unless the Court has any further questions, the state would rely on its brief with respect to that.

JUDGE LAVERY: Thank you, sir.

MR. LOHR: Thank you, Your Honors.

JUDGE LAVERY: Counsel, you got five minutes. Or Mr. Simmons, I'm sorry. You have five minutes, sir.

MR. SIMMONS: Your Honors, Mr. Simmons, back again.

JUDGE LAVERY: Yes.

MR. SIMMONS: Mr. Lohr, says approached this fella within 12, 15 inches of the driver's side. Keeping in mind that this vehicle had entered the property, had [15] made a U-turn and was exiting the property, so that the driver's side was on the other side. I was approaching the vehicle from the passenger side.

Irrespective of that, I mean, here's planes roaring and I'm motioning "Out of here", and I have that right to mo – what we're trying to do here is to stretch this thing so – way the hell out of proportion so "Hey, this guy's dangerous. Look out. He's going to – he's going to – he's going to pop somebody".

He – Mr. Lohr's, called my attention to a – a citation that he might use today. State of *Connecticut v. Paul* Crudup, and I sat in court here yesterday for the – listen to the three cases that were on in the afternoon, to get myself a little familiarized with the court procedures again, and I went over to the library. So, I got home; I found the message. I went back to the UConn library again to get this – get this citation that he said he would rely on. But, apparently, he doesn't want to put it – put it before the Court. But, I'm going to put it before the Court, because I read it, and it says this fella went in to somebody else's territory, and says "I'm going to pop you". Obviously, a case like that is a – is a case for the courts, and a case for conviction, versus "Hey, you two fellas, out of here". Am I supposed to tie my hands behind my back? Or am I pointing at them two, "Out of here". I have every [16] right, Your Honors, and under the constitution, first

amendment of free speech to order these fellas – these trespassers off the property. Trespassers, because they – they don't belong there.

Also, in the – in the brief, there's a section on ropes. I'm not supposed to use a rope on any part of the property. I can do what I want with that property. I have a purpose for putting the rope across – to restrict people from using the whole lot. If there's a 5-acre parcel, and I only want to let them utilize one half and acre, an acre, I stretch a rope across. I have that right. Who are they to tell me that I can't – I'm putting up a rope that they can't – so that the National guard can't go and drive all over my property. The rope was there for everybody – everybody – restrict from going toward the back part of the property. There's no need for it. There's – and there's a purpose for it. In this day and age of drug dealings, and other kinds of activity – illicit activities, I – I have a light that lights up the area – 1000 watt flood-light to help keep matters in orders there. And a rope was there for a purpose. And to have them – the state police – pick on me and have them put it in their – in their brief that I am putting a rope across. Who the hell are they to tell me that I can't put a rope on my property, anywhere I want, anyway I want, etc., [17] etc., etc. And this gets on the border – it's on the ridiculous.

The other – the other matter is, Your Honors, this – this is a – it involves Federal property, Federal installations. And there's certain rules that you got to go by when – when you have that type of situation. Automatically, Federal law comes into the picture. That's why Congress passed the Uniform Rail Property Acquisition Act in 1971. And – and that applies to the states, and as a result of that action, Connecticut legislature passed 48-17a, whereby, if you fail in condemnation once, or twice, I'm

entitled to my attorney's fees, engineering fees, etc., etc., costs and whatnot.

I have not had one hour, I have not had one day of hearing. I – I have not been notified, or listed even, to take any of that property, by – by the – and there has not been any action by the Connecticut Department of Transportation since 1972, in any way, shape or form, to take that property. And I say to this Court, there's got to be some kind of an action for this Appellate Court, or the Supreme Court, to be acting. They cannot act, should not act, with no case before the Court.

JUDGE LAVERY: Thank you, sir. Your time is up. Thank you both.

MR. SIMMONS: Thank you, Your Honors.

EXHIBIT 8

Law Offices
Jason E. Pearl
19 SOUTH HIGH STREET
POST OFFICE BOX 183
New Britain, Connecticut 06050

Jason E. Pearl Telephone

Kenneth J. Speyer (203) 229-1603

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
vs: August Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of

having to "reargue" your prior decision would have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl
Jason E. Pearl, Esq.

JEP/ck
1888

[Hearing set up for
9/12/79 at 2:00 p.m.]

EXHIBIT 8(a)

Linda

Based on SHELTON v WOLTHAUSEN, 80C 599 (furnished by Lucian) I would have no authority to grant this motion. Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks.

APPENDIX 9

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAW N. STATION A
HARTFORD, CONN. 06106

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion for Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled

by the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:mcd

cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire

EXHIBIT 9(a)

Sec. 20-5. Lodging Papers in Cause Affecting Land

In all causes relating to an interest in land, tried by a judge, the judge shall lodge the file and papers in the cause, with a memorandum of the judge's decision, with a clerk of the court in the judicial district in which the land affected is located, who shall thereupon become their lawful custodian.

(P.B. 1978-1997, Sec. 450.)

Sec. 450. Lodging Papers in Cause Affecting Land

In all causes relating to an interest in land, tried by a judge, the judge shall lodge the file and papers in the cause, with a memorandum of his decision, with a clerk of the court in the judicial district in which the land affected is located, who shall thereupon become their lawful custodian.

(P.B. 1963, Sec. 371.)